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STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE REGULATION
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
STANLEY "SKIP" PRUSS, DIRECTOR

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COMMISSIONER

BILL ANALYSIS

BILL NUMBER: House Bill 4989 (H-2)
TOPIC: Guaranteed Asset Protection Waiver
SPONSOR: Representative Tory Rocca
CO-SPONSORS: Representatives: Tim Melton and Bert Johnson

BILL NUMBER: House Bill 4990 (H-1)
TOPIC: A bill to amend 1956 PA 218, entitled "The Insurance code of 1956," by adding section 27.

BILL NUMBER: House Bill 4991, as introduced
TOPIC: A bill to amend 1950 (Ex Sess) PA 127, entitled "Motor vehicle sales finance act," by amending section 13.

BILL NUMBER: House Bill 4992, as introduced
TOPIC: A bill to amend PA 224, entitled "Retail installment sales act," by amending section 3.

SPONSOR: Bert Johnson

CO-SPONSORS: Tim Melton

COMMITTEE: Committee on Insurance

Analysis Done: August 14, 2009

POSITION

The Office of Financial and Insurance Regulation (OFIR) supports this legislation.

PROBLEM/BACKGROUND

As the cost of automobiles continue to be higher each year, a consumer who purchases an automobile will see the value of that purchase depreciate as they drive the car off the sales lot. The consumer purchases auto insurance to cover any loss from damage up to the value of the vehicle. This loss prevention insurance will only pay for the loss based upon this value and not negative-equity. If there is a total loss, a loan pay-off can be several thousand dollars more than the insurance company will pay the creditor; leaving the consumer with a significant out-of-pocket expense to clear the title and pay off the vehicle.

National banks have been specifically authorized to enter into debt cancellation contracts since 1964. Federal case law established that such contracts do not constitute state regulated insurance. Based on this fact, former OFIR Commissioner Linda A. Watters issued Declaratory Ruling 04-053-M on June 18, 2004. Application of this Declaratory Ruling was expressly limited to the sale of debt cancellation contracts (DCC) and debt suspension agreements (DSA) by depository institutions and limited to Section 402 of the Insurance Code of 1956 (MCL 500.402). With this limited application, Commissioner Watters concluded that the sale of DCCs and DSAs in connection with extensions of credit by depository institutions was not subject to regulation under the Insurance Code of 1956.

On this same date, Commissioner Watters sent a letter to the chief financial officers of state-chartered banks, saving banks and credit unions stating that any DCC or DSA offered in connection with extensions of credit by state-chartered depository institutions would be deemed by the Commissioner to be provided in a safe and sound manner, provided they comply with the standards identified in 12 CFR Part 37.

On July 11, 2008, Bulletin 2008-08-BT was issued by the current OFIR Commissioner in the matter of the sale of DCC and DSA by depository institutions. This Bulletin supersedes the prior Bulletin 2004-01 (which had been issued along with Declaratory Ruling 04-053-M) and offered further clarification on DCC and DSA waivers. An inquiry from an interested party prompted the Commissioner to review the Comptroller of the Currency rule § 37.5 in reference to a single or lump sum payment for a DCC or DSA product. In the review, the Commissioner concluded that state-chartered depository institutions do not have to offer a customer the option of paying the fee for a DCC in monthly or other periodic payments when the product offered is what is commonly known as a Guaranteed Asset Protection (GAP) waiver.

Many creditors have made DCC and DSA waivers available to their customers. GAP waivers are offered or provided in connection with finance agreements for certain motor vehicles. This waiver does not insure a loss, since the creditor is not promising to pay anyone else. They are only agreeing not to hold the borrower responsible for any loss of value not covered by insurance. The creditor has no need to accumulate a reserve to remain solvent.

DESCRIPTION OF BILLS

This bill package intends to clarify that the creditors, including automobile dealers and other financiers of auto loans and leases are not in the business of insurance when offering GAP waivers in connection with finance, loan or lease agreements. Beginning 180 days after the effective date of this act and the amendatory acts, a creditor that offers, sells, or provides a GAP waiver in this state must comply with this act.

HB 4989 creates the Guaranteed Asset Protection Waiver Act. This bill establishes the framework for regulating the offerings and sale of GAP waivers. A GAP waiver is a contractual agreement in which a creditor agrees, for a separate charge, to cancel or waive all or part of an amount due on a borrower's finance agreement in the event of a total physical damage loss or unrecovered theft of a motor vehicle. It provides for a "*free look period*" which must be at least 30 days. During this time the borrower may cancel their waiver without penalty, fees, or costs to the borrower.

HB 4990 amends the Insurance Code of 1956 to clarify that a GAP waiver is not insurance and is not subject to this act. A person is not required under this act to obtain a certificate of authority or a license to market, sell or offer to sell GAP waivers.

HB 4991 amends the Motor Vehicle Sales Finance Act to state that a GAP waiver must be part of, or an addendum to, the motor vehicle finance agreement. Installment sellers that offer, sell, or provide GAP waivers to installment buyers in this state must comply with the Guaranteed Asset Protection Waiver Act. The cost of the GAP waiver must be separately stated and must comply with the Truth in Lending Act and this act. These costs are not considered finance charges or interest.

HB 4992 amends the Retail Installment Sales Act to require retail sellers that offer, sell, or provide GAP waivers to retail buyers in this state to comply with the Guaranteed Asset Protection Waiver Act. A GAP waiver may be included as part of, or an addendum to, the retail installment contract. The cost of the waiver must be separately stated and must comply with the Truth in Lending Act and this act. These costs are not considered finance charges or interest.

House Bills 4990, 4991 and 4992 are tie barred with HB 4989.

SUMMARY OF ARGUMENTS

Pro

A GAP wavier is a valuable product offered to auto finance customers and it has covered hundreds of millions of dollars in negative equity losses. The key point is the obligation to relieve this debt lies with the installment seller. Federal law specifically exempts federally-chartered financial institutions. Not all lenders are federally-chartered and these remaining lenders needed clarification on their ability to sell GAP waiver product. By limiting the definition of a GAP waiver to the specific creditor that has extended the financing of the motor vehicle, this bill package would ensure that its application can not extend beyond that which it was intended.

Con

There are no known concerns about this bill.

FISCAL/ECONOMIC IMPACT

OFIR has identified the following revenue or budgetary implications in these bills:

(a) To the Office of Financial and Insurance Regulation: None

Budgetary:

Revenue:

Comments:

(b) To the Department of Energy, Labor & Economic Growth: None

Budgetary:

Revenue:

Comments:

(c) To the State of Michigan: None

Budgetary:

Revenue:

Comments:

(d) To Local Governments within this State: None

Comments:

OTHER STATE DEPARTMENTS

None

ANY OTHER PERTINENT INFORMATION

None

ADMINISTRATIVE RULES IMPACT

OFIR would have rule making authority under the Administrative Procedures Act of 1969, 1969 PA 306, (MCL 24.201 – 24.32) as necessary to implement and administer these acts.

A handwritten signature in black ink, appearing to be 'KR' followed by a horizontal stroke.

Ken Ross
Commissioner

8/19/09

Date

